

NA 07-0117-C H/H Hamilton v Astrue
Judge David F. Hamilton

Signed on 06/24/08

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

DONNA K. HAMILTON,)	
)	
Plaintiff,)	
vs.)	NO. 4:07-cv-00117-DFH-WGH
)	
MICHAEL J. ASTRUE,)	
)	
Defendant.)	

DONNA HAMILTON,)
)
Plaintiff,)
v.)
) CASE NO. 4:07-cv-0117-DFH-WGH
MICHAEL J. ASTRUE,)
Commissioner of the Social)
Security Administration,)
)
Defendant.)

Plaintiff Donna Hamilton seeks judicial review of a decision by the Commissioner of the Social Security Administration denying her application for disability insurance benefits. Acting for the Commissioner, Administrative Law Judge (ALJ) Deborah Smith determined that Ms. Hamilton was not disabled from June 16, 2002, through January 18, 2007. The ALJ found that although Ms. Hamilton suffered from several severe physical impairments, she retained the residual functional capacity to perform sedentary and light exertional work that did not require repetitive bending or binocular vision. The ALJ then determined that Ms. Hamilton could do her past work as a marketing manager. The Appeals Council denied Ms. Hamilton's request for review, leaving the ALJ's decision as the final decision of the Commissioner of Social Security. The court has jurisdiction under 42 U.S.C. § 405(g).

Ms. Hamilton contends that the ALJ erred in assessing both her residual functional capacity and her ability to return to her past relevant work. As explained in detail below, the ALJ did not support with substantial evidence either her finding that Ms. Hamilton could return to her past relevant work or her assessment of Ms. Hamilton's credibility. The ALJ's decision is therefore reversed and remanded to the Commissioner for reconsideration consistent with this entry.

Background

Ms. Hamilton was born in 1946 and was sixty years old at the time of the ALJ's decision. She completed high school, and she worked as a teller and a manager at a bank for twenty-three years. R. 126, 353. She stopped work in 2002 when the company cut back and displaced her job. R. 85. On July 19, 2004, Ms. Hamilton applied for disability insurance benefits, alleging that she had been disabled since September 16, 2002. Ms. Hamilton suffered from significant medical problems, the most relevant of which were degenerative disc disease of the spine, fibromyalgia, osteopenia, and blindness in her right eye.

Dr. George Alcorn, her primary care physician, examined and treated Ms. Hamilton on many occasions from January 3, 2002, through September 14, 2006. Dr. Alcorn saw Ms. Hamilton for a variety of complaints, including severe back pain, fatigue, gastrointestinal discomfort, muscle aches, and arthritis. On February 11, 2005, his musculoskeletal exam determined "[n]o falls, has arthritis complaints, no gait disorder, has muscle aches." R. 289. On her last visit, in

2006, he noted that she had “chronic problems with hypertension, fibromyalgia” and diagnosed her with carotid stenosis and angina. R. 306-07.

On April 21, 2005, Dr. Alcorn completed a residual functional capacity assessment for Ms. Hamilton. He found severe exertional limitations. In parts one through five of the assessment, he concluded that Ms. Hamilton could not lift more than ten pounds, could not stand more than two hours in an eight hour workday, needed to alternate between sitting and standing, and had limited ability to push and pull with her lower extremities. R. 248. Dr. Alcorn did not support these limitations with explanation or specific facts as generally requested by part six of the assessment and as specifically directed by his selections in parts one, two, and four. *Id.* Dr. Alcorn also evaluated Ms. Hamilton’s manipulative limitations and determined that she was unlimited in reaching, handling, fingering, and feeling. R. 250

Dr. John Guarnaschelli diagnosed Ms. Hamilton with a lumbar disc herniation, and he performed surgery to correct it on June 19, 2004. R. 148-49. On August 28, 2004, he noted “the severe nerve root pain that [existed] prior to surgery is gone,” and he then administered trigger point injections to help manage the lingering pain of surgery and physical therapy. R. 270-71. On May 27, 2005, Dr. Guarnashelli interpreted MRI scans of Ms. Hamilton’s back and diagnosed a “small right sided L5 disc on the opposite side, but [one] that is not as severe as

what she had when she had her left sided surgery.” R. 278. He recommended continuing “conservative measures.” *Id.*

On September 13, 2006, Dr. Guarnaschelli saw Ms. Hamilton in his office. He ordered additional X-rays that indicated degeneration in Ms. Hamilton’s cervical and lumbar spine. R. 301-02. These X-rays were sent to the ALJ on October 29, 2006, and appear in the record. R. 318. Dr. Guarnaschelli also wrote office notes and a residual functional capacity assessment, both of which were submitted after Ms. Hamilton’s hearing before the ALJ. This evidence was never attached to the case record and was not mentioned in the ALJ’s opinion. In his office notes from September 13, 2006, Dr. Guarnaschelli wrote: “Her story is that of age-related degenerative changes. . . . every attempt should be made to treat her conservatively. With regards for her ability to work, of course, a great deal depends on her ability to tolerate pain.” Pl. Br. Ex. A 4. On September 26, 2006, he completed an assessment of her exertional limits. He concluded that she could sit for no more than two hours at a time and could not lift more than twenty pounds. *Id.* at 2. Like Dr. Alcorn’s assessment, this assessment included severe limitations but did not cite medical evidence to support them.

Dr. Michael Cronen consulted with Ms. Hamilton before her surgery and provided a series of local anesthetic injections to her back in late 2004, after the operation. R. 244. Dr. Cronen treated her for pain in the sacroiliac joint, and after his final injection he indicated that Ms. Hamilton “reports 85% pain relief

with last injection. [She] states that her back brace is helping.” R. 240. As an anesthesiologist, Dr. Cronen was not trained to determine residual functional capacity and declined to make an assessment of Ms. Hamilton. R. 238.

Dr. Apostolos Kalovidouris, a rheumatologist, examined Ms. Hamilton on June 3, 2005. During the physical exam, he found several areas of subjective tenderness. R. 286. He did not chart these findings, nor did he explicitly state that his findings satisfied eleven of the eighteen trigger points normally used to diagnosis fibromyalgia. He also noted Bouchard’s nodes and Heberden’s nodes in the small joints of the hands, tenderness in the wrists, and normal elbow function. *Id.*¹ Based upon this exam, an MRI, and blood analysis, Dr. Kalovidouris’s impression was of osteoarthritis of the lumbar spine, fibromyalgia, and osteopenia.² *Id.* He advised Ms. Hamilton that she should take “joint protection measures with respect to low back pain such as trying to walk very frequently and avoid prolonged sitting.” R. 286. He saw Ms. Hamilton again on September 8, 2005, and noted x-ray findings consistent with tendinitis of the left shoulder. R. 294. He again instructed her on “joint protection measures and [range of motion] exercises.” R. 293.

¹Bouchard’s and Heberden’s nodes are permanent bony growths that develop in the joints of the fingers and toes. They are associated with osteoarthritis.

²Osteopenia is characterized by a deficiency in bone density. It may lead to osteoporosis.

Dr. Robert Kirkpatrick, an optometrist, documented toxoplasmosis in Ms. Hamilton's right eye. Several other physicians also recorded this injury, which Ms. Hamilton first sustained at age fifteen. On March 11, 2005, Dr. Kirkpatrick wrote that her right eye was extensively scarred, leaving her with "finger-counting vision only." R. 218. He anticipated that a lens change would give her 20/20 vision in the left eye. *Id.*

Dr. Mehmet Akaydin, Jr., conducted a consultative exam for the Commissioner on October 18, 2004. He noted some range of motion limitations but found that Ms. Hamilton's back was "grossly non-tender to firm gentle palpitation along the entire length . . . except for some mild (subjective) discomfort appreciated in the region of the well-healed . . . lumbar scar (no overt swelling, warmth, erythema, or spasms appreciated)." R. 175. Dr. Akaydin documented normal overall muscle strength and that "[b]oth arms and legs (including hands and feet) were extremely healthy in overall appearance with excellent peripheral pulses." *Id.* He measured her grip strength with a dynamometer at "right hand 42 pounds, left hand 34 pounds" and observed normal manipulative ability in her hands. R. 176. Dr. Akaydin concluded that Ms. Hamilton "should be quite capable of performing most forms of at least mildly physically strenuous employment at present time including those jobs essentially of a sedentary and 'sit-down' variety (would minimize physical stress/strain on her body as a whole and on her lower back region in particular)." R. 177.

On November 10, 2004, Dr. A. Dobson completed a consultative residual function capacity assessment. Citing Dr. Akaydin's exam results, Dr. Dobson concluded that Ms. Hamilton was limited to occasionally lifting fifty pounds, frequently lifting twenty five pounds, and sitting or standing for not more than six hours in an eight hour workday. R. 182.

Testimony at the Hearing

On September 5, 2006, Ms. Hamilton testified that she could not work because of fibromyalgia, osteoporosis, a bulging disc in her neck, and major problems with her back. R. 356. On examination by the ALJ, she reported that she had a "maximum tolerance" for sitting of fifteen minutes. R. 357. She also testified: "I can't do much walking because I've got that pinched nerves, and the sacroiliac back there So just around the house or something like that is what I usually walk." *Id.* Ms. Hamilton stated that she spent most of the day reclining with her feet up in a level position. R. 357, 367. She could "lift a gallon of milk, but nothing, nothing real heavy." R. 357. She also stated that she could not lift a gallon of milk repeatedly. R. 366. She testified that her daily activities were generally limited to cooking dinner (which she started at noon), writing and phoning friends, and attending church services. R. 362.

Ms. Hamilton testified that "with my hands going to sleep, I can't operate a computer." R. 356. She explained that there was "no circulation" in her fingers, that they became white on a daily basis, and that they were crooked and drew up

on her. R. 369. She also testified that “I can’t read very long at a time, because I’m legally blind in the one eye, and I have floaters in the other eye.” R. 359. Ms. Hamilton was blind in her right eye when she worked, but claimed that problems in her left eye had developed as she aged. *Id.*

Dr. David Randolph, who did not treat or examine Ms. Hamilton, testified as a medical expert. He determined that Ms. Hamilton did not meet or equal any listed impairments. R. 374. He referred to 2004 exams by Dr. Akaydin and Dr. Guarnashelli to suggest that after surgery, Ms. Hamilton exhibited normal muscle strength, no sensory abnormalities, normal gait, and an absence of nerve-related pain. R. 371-72. He testified: “Progress reports in the interval thereafter are a bit on the spotty side, there’s reference made to a number of subjective complaints. The progress reports really are strangely devoid of objective examination findings in the time frame since then.” R. 372.

Addressing fibromyalgia, Dr. Randolph agreed that Dr. Kalovidouris made “reference to tender points in varying anatomic locations.” R. 372A. However, Dr. Randolph found no “objective evidence that indicates that she reaches the level of the criteria from the American College of Rheumatology.” *Id.*

Dr. Randolph also found “nothing to indicate that she had any diagnostic studies with respect to her [sacroiliac] joint, although there are periodic references in here to the use of braces and subjective complaints.” R. 373. He testified that

X-rays and other evidence supported a diagnosis of disc degeneration, osteoarthritis, and osteopenia, but that these were “in keeping with her age.” *Id.* Dr. Randolph also mentioned that part of treatment for osteopenia is to “maintain as high level of activity as possible in order to maintain bony metabolism.” *Id.* Addressing Ms. Hamilton’s hands, Dr. Randolph said that the evidence indicated “garden variety osteoarthritic changes.” R. 375. He testified that she could lift twenty pounds occasionally and ten pounds frequently. R. 376. Dr. Randolph specifically testified that the medical evidence did not support Dr. Alcorn’s very limited residual functional capacity assessment. R. 375.

Vocational expert Janet Rogers testified that Ms. Hamilton’s work as a marketing manager, as she actually performed it, was in the medium range of exertion. R. 395. The Dictionary of Occupational Titles classified the job as sedentary. *Id.* Ms. Rogers found that Ms. Hamilton had management, clerical, office, and computer skills that would “transfer to other jobs at the sedentary level of exertion without any vocational adjustment.” *Id.* Ms. Hamilton would, however, have to use a computer. *Id.* Ms. Rogers testified that Ms. Hamilton could “still do her past relevant work either as performed or as generally performed” under Dr. Randolph’s and Dr. Dobson’s exertional limitations, but not under Dr. Alcorn’s limitations. R. 395-97.

The Disability Standard

To be eligible for disability insurance benefits, a claimant must demonstrate an inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of no less than twelve months. 42 U.S.C. § 423(d). If a claimant's impairment is listed in Part 404, Appendix 1, Subpart P of the implementing regulations, and if the duration requirement is met, then disability is presumed. 20 C.F.R. § 404.1520(d). Otherwise, a claimant can establish disability only if her impairments are of such severity that she is unable to perform both work that she has previously performed and all other substantial work available in the national economy. 20 C.F.R. § 404.1520(f) and (g).

This is a rigorous standard. A claimant is not necessarily entitled to benefits even if she has substantial impairments. The Act does not contemplate degrees of disability or allow for an award based on partial disability. *Stephens v. Heckler*, 766 F.2d 284, 285 (7th Cir. 1985). Benefits are paid for with tax dollars, including taxes paid by people for whom working is quite painful and difficult. Under the statutory standard, these benefits are available only as a matter of nearly last resort.

The implementing regulations for the Act provide the familiar five-step process to evaluate a disability claim. See 20 C.F.R. § 404.1520(a)(4). The steps are:

- (1) Is the claimant currently employed? If so, she is not disabled.
- (2) If not, does the claimant have a severe impairment or combination of impairments? If not, she is not disabled.
- (3) If so, does the impairment meet or equal an impairment listed in the regulations? If so, she is disabled.
- (4) If not, does the claimant retain the residual functional capacity to do her past relevant work? If so, she is not disabled.
- (5) If not, does the claimant retain the residual functional capacity to perform other work in the national economy? If so, she is not disabled. If not, she is disabled.

When applying this test, the burden of proof rests on the claimant for the first four steps and on the Commissioner for the fifth step. *Zurawski v. Halter*, 245 F.3d 881, 886 (7th Cir. 2001).

Standard of Review

If the Commissioner's decision is supported by substantial evidence, it must be upheld by a reviewing court. 42 U.S.C. § 405(g); *Maggard v. Apfel*, 167 F.3d 376, 379 (7th Cir. 1999). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.*, quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971). To determine whether substantial evidence exists, the court reviews the record as a whole but does not attempt to substitute its judgment for the ALJ's judgment by reweighing the evidence, resolving material conflicts, or reconsidering facts or the credibility of witnesses. *Cannon v. Apfel*, 213 F.3d 970, 974 (7th Cir. 2000). "Where conflicting evidence allows reasonable minds to differ as to whether a claimant is entitled to benefits," the court must defer to the Commissioner's resolution of that factual conflict. *Binion v. Chater*, 108 F.3d 780, 782 (7th Cir. 1997).

A reversal and remand may be required, however, if the ALJ committed an error of law, *id.*, or if the ALJ based the decision on serious factual mistakes or omissions. *Sarchet v. Chater*, 78 F.3d 305, 309 (7th Cir. 1996). The ALJ has a basic obligation to develop a full and fair record, *Nelson v. Apfel*, 131 F.3d 1228, 1235 (7th Cir. 1997), and must build an accurate and logical bridge between the evidence and the result to permit meaningful judicial review of the administrative findings. *Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003); *Sarchet*, 78 F.3d at 307. If the evidence on which the ALJ relied does not support the conclusion, the decision cannot be upheld. *Blakes*, 331 F.3d at 569.

Ordinarily a credibility finding by an ALJ is binding on a reviewing court, unless that finding is based on errors of fact or logic. *Allord v. Barnhart*, 455 F.3d 818, 821 (7th Cir. 2006). In making a credibility determination, the ALJ must give specific reasons for the weight given to the claimant's statements so that the claimant and subsequent reviewers will have a fair sense of how the claimant's testimony was assessed. S.S.R. 96-7p, printed in 61 Fed. Reg. 34483, 34486 (July 2, 1996); *Brindisi v. Barnhart*, 315 F.3d 783, 787 (7th Cir. 2003) ("The determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear . . . the weight the adjudicator gave to the individual's statements and the reasons for that weight."). A remand is required when the ALJ makes credibility findings based on "serious errors in reasoning rather than merely the demeanor of the witness." *Carradine v. Barnhart*, 360 F.3d 751, 754 (7th Cir. 2004).

The ALJ's Disability Determination

Applying the five-step process, the ALJ determined at step one that Ms. Hamilton had not performed substantial gainful activity since the alleged onset of her disability. R. 16. At step two, the ALJ determined that Ms. Hamilton had the following severe impairments: fibromyalgia, degenerative disc disease of the lumbar spine and status post surgery in June 2004, degenerative disc disease of the cervical spine, osteopenia, and blindness in the right eye. R. 17. At step three, the ALJ found that Ms. Hamilton did not have an impairment or

combination of impairments that met or equaled one of the impairments listed in the regulations. *Id.* The ALJ then found that Ms. Hamilton retained the residual functional capacity to do light work. R. 19. At step four, the ALJ relied on the testimony of a vocational expert and determined that Ms. Hamilton retained the ability to do her past relevant work as a marketing manager as that job was generally performed in the national economy. R. 23-24. Because she could do her past relevant work, the ALJ held that Ms. Hamilton had not been under a disability within the meaning of the Social Security Act.

Discussion

Ms. Hamilton contends that the ALJ erred by not addressing evidence that was submitted after the hearing. Ms. Hamilton also argues that the ALJ did not rely upon substantial evidence when she made decisions about physician credibility, Ms. Hamilton's credibility, and the effect of Ms. Hamilton's fibromyalgia. Finally, she asserts that the ALJ ignored undisputed evidence that she could not use a computer as was required by her past relevant work.

I. *Post-Hearing Medical Records*

Ms. Hamilton first argues that the ALJ erred in assessing her residual functional capacity by not considering medical records from her surgeon, Dr. Guarnaschelli, that were faxed to the ALJ after the hearing. The additional records consist of a residual functional capacity assessment and typed office notes.

Congress gave the Commissioner the authority to establish hearing procedures, including standards for the admission of evidence. 42 U.S.C. § 405(a); see *Richardson v. Perales*, 402 U.S. 389, 399-400 (1971). At any time before she mails the decision, the ALJ *may* reopen the hearing to receive new and material evidence. 20 C.F.R. § 416.1444.

The ALJ convened and closed Ms. Hamilton's hearing on September 5, 2006. On September 28, Ms. Hamilton requested additional time to submit medical records. R. 74. On October 20, Ms. Hamilton submitted financial records and reiterated that medical records would arrive shortly. R. 76. On October 29, Ms. Hamilton submitted several medical records to the ALJ. R. 318. She also requested an additional 10 days to submit medical records from Dr. Guarnaschelli. *Id.* Twelve days later, on November 10, Ms. Hamilton faxed Dr. Guarnaschelli's assessment to the ALJ. Pl. Br. Ex. A 1.

The record does not indicate whether the ALJ received the November 10 records. Even if she received them, she was not bound to include them in her decision. The records were submitted after the close of the hearing, and the ALJ had the discretion to reject them. Because of this discretion, the absence of these records – whether accidental or deliberate – is not evidence of legal error.

This conclusion is not undermined by the Commissioner's statutory obligation to make every reasonable effort to obtain medical evidence from a treating physician. 42 U.S.C. § 423(d)(5)(B). Agency representatives mailed a request for all medical records to Dr. Guarnaschelli's surgical group on August 14, 2004. R. 127. The ALJ considered records from Dr. Guarnaschelli produced both by this inquiry and by later efforts of Ms. Hamilton's attorney. Exclusion of the records from after the hearing is consistent with the Commissioner's regulatory power and is not unreasonable. Federal law does not mandate an indefinite timetable for the submission of new evidence.

The case law that Ms. Hamilton relies upon to support her position does not apply to exhibits not admitted as evidence by the ALJ. See, e.g., *Godbey v. Apfel*, 238 F.3d 803, 807 (7th Cir. 2000) (remanding because the ALJ failed to consider important evidence *in the record* that countered the ALJ's determination that the plaintiff was not disabled); *Clifford v. Apfel*, 227 F.3d 863, 870 (7th Cir. 2000) ("We have . . . insisted that an ALJ must not substitute his own judgment for a

physician's opinion without relying on other medical evidence or authority *in the record.*") (emphasis added).

The ALJ decision under review is complete as a matter of law without Dr. Guarnaschelli's reports from after the hearing. However, this evidence will be available to the ALJ on remand from this decision on other grounds.

II. *The Treating Physician's Opinions*

Ms. Hamilton also requests review of the ALJ's discussion of treating physician opinions. The Social Security regulations contain specific guidelines to help the ALJ assign the correct weight to medical opinions. The regulations do not apply to Dr. Guarnaschelli's residual functional capacity assessment because that assessment was not considered in the ALJ's decision. The regulations do apply to Dr. Alcorn's opinion. He both treated Ms. Hamilton and supplied a residual function assessment that formed the core of her case.

A treating physician's opinion is entitled to controlling weight if it is well supported by medical findings and not inconsistent with other substantial evidence in the record. See 20 C.F.R. § 404.1527(d)(2); *Dixon v. Massanari*, 270 F.3d 1171, 1177 (7th Cir. 2001). If the treating physician's opinion is not entitled to controlling weight, the ALJ's evaluation is guided by several factors. 20 C.F.R. § 404.1527(d). For example, the ALJ looks at the length and closeness of the treatment relationship and the presence of other medical evidence, like

medical signs and laboratory findings. *Id.* A treating physician's opinion often carries the advantages of close contact and longitudinal study, *id.*, but the ALJ must also be mindful of the biases that can arise from close treatment relationships. *Dixon*, 270 F.3d at 1177. The physician may want to do a favor for a client or a friend, or may not appreciate how his patient's case compares to other similar cases. *Id.*

Dr. Alcorn's opinion is not entitled to controlling weight because it is inconsistent with other evidence in the record. When assigning little weight to Dr. Alcorn's assessment, the ALJ stated that Dr. Alcorn's conclusions conflicted with the opinion of Dr. Randolph, the functional assessments of state medical consultants, the available x-rays and MRI's, the relatively low dose of her pain medication, and even Dr. Alcorn's own recommendation that Ms. Hamilton walk frequently. R. 23. The ALJ recognized that Dr. Alcorn had treated Ms. Hamilton on many occasions over a four year period, R. 20, but she also found a lack of supporting medical evidence in Dr. Alcorn's report. R. 23. As noted above, the ALJ identified inconsistencies with other evidence and pointed out that "Dr. Alcorn is her primary care physician and not a specialist." R. 23. The ALJ's reasoning built an accurate and logical bridge between the available medical evidence and the result, and therefore her result is not contrary to the law. See *Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003).

III. *Fibromyalgia*

Ms. Hamilton also contends that the ALJ's findings were not supported by substantial evidence because she relied upon the opinion of Dr. Randolph, the medical expert at the hearing. Ms. Hamilton stipulated to Dr. Randolph's qualifications as an expert, R. 370, but objects to his statements about the disabling effects of fibromyalgia.

The court does not question that fibromyalgia can be completely disabling. *Estok v. Apfel*, 152 F.3d 636, 638 (7th Cir. 1998), citing *Sarchet v. Chater*, 78 F.3d 305, 307 (7th Cir. 1996). Where the symptoms of pain are entirely subjective, credibility becomes important to disability assessment, and other evidence must be produced. "It is not enough to show that she had received a diagnosis of fibromyalgia with a date of onset prior to the expiration of the insured period, since fibromyalgia is not always (indeed, not usually) disabling." *Estok*, 152 F.3d at 640.

Ultimately, disability determination is a legal decision to be made by agents of the Commissioner of Social Security. See 20 C.F.R. § 404.1503; 20 C.F.R. § 404.1527(e)(1). It is the legal opinion of the ALJ that must be correct, not the medical opinion of a testifying physician. The ALJ will be correct whenever she has spelled out a logical conclusion that is supported by substantial evidence.

The record shows that Dr. Randolph testified: "Hence the term or the condition known as fibromyalgia with it's [sic] (INAUDIBLE) subjective complaints

would not be considered disabled.” R. 372. On cross-examination, Ms. Hamilton’s attorney said, “Doctor, you said – I think you described fibromyalgia is not considered, considered [sic] disabling, is that your opinion?” R. 377. Dr. Randolph replied, “Yes, sir.” *Id.*

Neither the ALJ nor Ms. Hamilton pushed Dr. Randolph to discuss the issue further. The record as it stands does not conclusively demonstrate an error (Dr. Randolph might have been discussing, for example, Ms. Hamilton’s specific fibromyalgia). More important, the ALJ’s opinion stated that “Dr. Randolph further testified that fibromyalgia is *not necessarily* a disabling condition.” R. 19 (emphasis added). The ALJ thus arrived at the correct legal conclusion, and it is her conclusion only that is under review.

The ALJ’s analysis did not rely upon Dr. Randolph’s possible misstatement. Instead the ALJ primarily used Dr. Randolph’s criticism and analysis of other physicians’ opinions and records. R. 23. She also specifically considered Dr. Akaydin’s endorsement of sedentary jobs and Dr. Kalovidouris’s recommendation of general activity. *Id.* The ALJ listed fibromyalgia as one of Ms. Hamilton’s severe impairments. The ALJ’s further discussion of the disease was based upon the medical opinion of several physicians. It contained no errors of law except those discussed below.

IV. *Past Relevant Work*

Ms. Hamilton also asserts that the ALJ erred by finding that she could do her past relevant work as a marketing manager. Ms. Hamilton used a computer in her actual work, and the vocational expert testified that a computer would “most likely” be needed for other sedentary clerical jobs. R. 400. Ms. Hamilton claims that undisputed evidence showed that her hand problems, eye problems, and limited of motion in her neck, prevented her from using a computer.

At step four in the disability analysis, a claimant is not disabled if she can perform her past relevant work either as she actually performed it or as it is generally performed in the national economy. 20 C.F.R. § 404.1560(b)(2). The claimant bears the burden of demonstrating that she cannot perform her past relevant work. *Arbogast v. Bowen*, 860 F.2d 1400, 1403 (7th Cir. 1988).

A. *As Actually Performed*

Ms. Hamilton’s position at the bank required her to lift between twenty and thirty pounds. R. 393. The vocational expert classified this job as medium work under the Commissioner’s definitions for exertion level. R. 395. The ALJ determined that Ms. Hamilton had the capacity for light work, and the expert agreed that this restriction would prevent Ms. Hamilton from performing her old work as she once had. R. 396. The record shows that Ms. Hamilton could not return to perform her old job as she had actually performed it.

B. *As Generally Performed in the National Economy*

An ALJ may use the Dictionary of Occupational Titles to determine how jobs are generally performed in the national economy. 20 C.F.R. § 404.1560(b)(2). In this case, the Dictionary indicated that Ms. Hamilton's prior work was sedentary as it was generally performed in the national economy. R. 395. The vocational expert testified that Ms. Hamilton's capability to do light exertional work would allow her to do this sedentary job. R. 396. The expert also specifically testified that Ms. Hamilton could not do her past work if she could no longer use a computer. R. 398-99.

"An ALJ may not ignore an entire line of evidence that is contrary to her findings." *Zurawski v. Halter*, 245 F.3d 881, 888 (7th Cir. 2001). Rather, she must articulate at some minimum level her analysis of the evidence to permit an informed review. *Id.*, quoting *Clifford v. Apfel*, 227 F.3d 863 (7th Cir. 2000). The ALJ must provide "a glimpse into the reasoning behind her decision" but is not required to examine every piece of evidence in the record. *Zurawski*, 245 F.3d at 889.

In the factual background, the ALJ's opinion included Ms. Hamilton's testimony that she could no longer use a computer. R. 19. The ALJ's residual functional determination limited Ms. Hamilton to jobs that do not require binocular vision, *id.*, but noted that Ms. Hamilton had "worked with [her right eye] problem for years," R. 17. While the opinion did adopt the conclusions of the vocational expert who testified at the hearing, R. 24, 396, no part of it discussed

in greater detail how these conditions affected Ms. Hamilton's ability to use a computer.³

Ms. Hamilton's alleged combination of spinal, vision, and hand maladies could have totally prevented her from using a computer, as she claimed. Her ability to do her past work depended upon the effective use of a computer, even when considering that job as it was generally performed in the national economy. Because of this issue's importance, the ALJ's summary dismissal of it as one of the "claimant's statements concerning the intensity, persistence and limiting effects of [her] symptoms" is not sufficient. R. 23. The ALJ's short analysis does not demonstrate that she came to grips with the severely limiting ways in which Ms. Hamilton said her arthritis and vision problems prevented her from using a computer. Because the ALJ did not explain her reasoning on this issue, the opinion fails to permit an informed review. See *Zurawski v. Halter*, 245 F.3d 881, 889 (7th Cir. 2001). A remand is necessary so that the ALJ can examine evidence of Ms. Hamilton's practical ability to operate a computer.

V. *Credibility Finding*

³The record contains significant evidence that would bear on this question. In addition to the uncontested arthritis in her cervical and lumbar spine, Ms. Hamilton also complained of severe pain in her hands. Dr. Kalovidouris made objective findings that Dr. Randolph addressed as "garden variety osteoarthritic changes," R. 286, 375, but the Commissioner's consulting physician, Dr. Akaydin, described "excellent . . . skills/capabilities in both hands." R. 177. Ms. Hamilton also complained of deteriorating vision, in addition to her right-eye blindness. The ALJ did not explore relevant evidence from her optometrist, R. 218, nor discuss how all of this evidence affected her decision.

Ms. Hamilton asserts that the ALJ erred in her credibility assessment because the opinion failed to express specific reasons for the assessment as required by regulation.

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities in the record. See, e.g., *Cannon v. Apfel*, 213 F.3d 970, 974 (7th Cir. 2000); *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). The ALJ can discount subjective complaints of pain that are inconsistent with the evidence as a whole, but cannot discount such complaints merely because they are not supported by objective medical evidence. *Knight v. Chater*, 55 F.3d 309, 314 (7th Cir. 1995). “The absence of objective medical evidence is just one factor to be considered along with: (a) the claimant’s daily activities; (b) the location, duration, frequency and intensity of the pain; (c) precipitating and aggravating factors; (d) type, dosage, effectiveness and side effects of medication; (e) treatment other than medication; (f) any measures the claimant has used to relieve the pain or other symptoms; and, (g) functional limitations and restrictions.” *Id.*, citing 20 C.F.R. § 404.1529(c)(3).

The ALJ need not mechanically recite findings on each factor, but the ALJ must give specific reasons for the weight given to the claimant’s statements so that the claimant and subsequent reviewers will have a fair sense of how the claimant’s testimony was assessed. S.S.R. 96-7p, printed in 61 Fed. Reg. 34483, 34486 (July 2, 1996); see *Brindisi v. Barnhart*, 315 F.3d 783, 787 (7th Cir. 2003)

(in making a credibility determination the ALJ must comply with the requirements of Social Security Ruling 96-7p, which requires ALJ to articulate the reasons behind credibility evaluations); *Steele v. Barnhart*, 290 F.3d 936, 941-42 (7th Cir. 2002) (ALJ's explanation insufficient where the ALJ had written only: "The claimant's subjective complaints and alleged limitations were considered under the criteria of Social Security Ruling 96-7p and found credible only to the extent of precluding the claimant from performing work in excess of light level.") When the ALJ has established the existence of impairments that could reasonably be expected to produce the claimed symptoms, she must then evaluate the intensity, persistence, and functionally limiting effects of the symptoms to determine the extent to which the symptoms affect the claimant's ability to do basic work activities. S.S.R. 96-7p, printed in 61 Fed. Reg. 34483, 34484 (July 2, 1996). To reach a conclusion about the claimant's credibility, the ALJ must consider the entire case record. *Id.* The ALJ cannot make a single, conclusory statement, but must present specific reasons "to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight." *Id.*

The ALJ stated that "the claimant's statements concerning the intensity, persistence and limiting effects of [her] symptoms are not entirely credible." R. 23. The ALJ credited Dr. Kalovidouris and Dr. Randolph, who recommended that Ms. Hamilton become more physically active. *Id.* The ALJ found these opinions to be inconsistent with the extent of Ms. Hamilton's complaints, as was Dr. Akaydin's

statement that she “should be capable of a sedentary sit down job.” *Id.* The ALJ also pointed out that Ms. Hamilton was “only being treated conservatively with a low dose of pain medications.” *Id.*

The ALJ made a difficult determination when she assigned credibility. She faced a wide spectrum of inconsistent evidence when considering, for example, Ms. Hamilton’s ability to sit for an extended period of time. Ms. Hamilton and Dr. Alcorn stated a limit of under two hours, but Dr. Akaydin and Dr. Randolph found a capability of six to eight hours.⁴ Credibility is also essential to evaluation of the particular disabilities that Ms. Hamilton claimed. Fibromyalgia is very difficult to diagnose, and no objective medical tests reveal its presence. *Estok v. Apfel*, 152 F.3d 636, 638 (7th Cir. 1998). The lack of objective medical evidence means that Ms. Hamilton’s complaints could be weighed only against subjective findings and medical opinions. The ALJ’s opinion should have contained discussion of Ms. Hamilton’s daily activities, which she claimed were highly restricted. Similarly, it should have explained, not just mentioned, the effects and dosages of her numerous medications.⁵

The sufficiency of the ALJ’s credibility assessment is admittedly a close call, but the case must also be remanded on other grounds. Because of the essentially

⁴During testimony, Ms. Hamilton actually claimed a “maximum tolerance” for sitting of about fifteen minutes. R. 357.

⁵Ms. Hamilton indicated that she took between seven and eleven different prescription medications at a time during the course of her disability benefits application and appeals. R. 89, 104, 106, 125.

subjective nature of this case, the ALJ needed to include more in her analysis to give both Ms. Hamilton and the court a fair sense of how the entire case record was judged. See S.S.R. 96-7p, printed in 61 Fed. Reg. 34483, 34486 (July 2, 1996). On remand, the ALJ should review the credibility determination with reference to the seven factors listed in 20 C.F.R. § 404.1529(c)(3) and Social Security Ruling 96-7p.

Conclusion

The decision of the ALJ is reversed and remanded for reconsideration consistent with this entry. On remand, all steps of the five-step sequential process are subject to reconsideration. Final judgment will be entered consistent with this entry.

So ordered.

Date: June 24, 2008

DAVID F. HAMILTON, CHIEF JUDGE
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Southern District of Indiana

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